



Private Facility

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
MEDICAL ASSISTANCE PARTICIPATION AGREEMENT
(MEDICAID/TENNCARE TITLE XIX PROGRAM)

FOR
ICF/MR SERVICES

This agreement and working contract, entered into this ____ day of _____, _____, between the Tennessee Department of Finance and Administration, hereinafter referred to as "the Department" and _____, a currently licensed and certified Intermediate Care Facility for the Mentally Retarded, hereinafter referred to as "the Facility".

WITNESSETH :

THE TERMS, OBLIGATIONS AND CONDITIONS

I. The Facility Agrees:

A. Patient Care :

1. To maintain all necessary records on each recipient at the Facility in accordance with State and Federal regulations. These records and pertinent staff are to be made available to the Department and its authorized representatives.
2. To comply with the Department's survey process for the evaluation of the necessity, adequacy, quality, and appropriateness of each recipient's care and to take appropriate corrective action, within the time frame specified by the Department, to correct deficiencies identified by the survey process.
3. To comply with the State and Federal Regulations which govern the admission, transfer or discharge policies for recipients.
4. To provide or make arrangements for each resident the needed specialized and supportive rehabilitative services and restorative nursing care.

5. No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this contract or in the employment practices of the Facility. The Facility shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination. The Facility shall comply with 29 USC 701 et seq. (Employment of the Handicapped), 42 USC 12101 et seq. (Americans with Disabilities Act, Pub. L. 101-336) and all other applicable federal regulations in the performance of its duties under this grant.
6. To have on file and make available on request of the authorized representatives of the Department and the Comptroller of the Treasury, a system designed and utilized to insure the integrity of the recipient's personal financial resources. This system shall be designed in accordance with the regulations and guidelines set out by the Department of Finance and Administration and the applicable Code of Federal Regulations.
7. To insure compliance of the Facility with all Federal and State statutes, regulations, and guidelines regarding reimbursement and patient care by making timely corrections of any deficiencies made known to the Facility.
8. To establish and implement an approved utilization review plan in accordance with State and Federal Regulations. The plan must be written and must provide for a review of the necessity for continued stay at least every six months or more frequently if indicated at the time of assessment.
9. To promptly notify the Department of Human Services office in the county in which the Facility is located when a recipient is admitted, or when there is a known change in circumstances and give notification prior to the recipient's discharge.
10. To make available patients' medical and other records upon request of the Department.
11. To provide independent Support Coordinators with open access to residents and staff of the Facility.
12. To participate in individual care plan (support plan) meetings conducted by independent Support Coordinators, as requested, and to develop implementation plans for outcomes, as identified in the support plan, for which the Facility is responsible.
13. To comply with incident, abuse, injury, and investigations documentation and reporting requirements developed by the State's Division of Mental Retardation Services.

14. To comply with staff training requirements established by the State's Division of Mental Retardation Services, including, but not limited to, the following:
 - a) To provide pre-service training for direct service staff (staff who provide direct services or support to individuals) which shall include first aid, CPR, and the Heimlich maneuver; general fire safety and evacuation; incident reporting; and training specific to the needs of the individual.
 - b) To provide within sixty days of the date of employment, training to direct service staff which shall include individual rights and the Americans with Disabilities Act; program planning and implementation; principles of behavioral support; and prevention and reporting of abuse and neglect.
 - c) To meet State's Division of Mental Retardation Services specified content for each training module in pre-service training and training that must be completed within 60 days of employment.
 - d) To provide a monthly report of required training activities to the State's Division of Mental Retardation Services.
 - e) To assure that at least one staff person who is trained in first aid, CPR, and the Heimlich maneuver is on duty in each individual's residence.
15. To provide recipient information to the State's Division of Mental Retardation Services, including but not limited to, demographic, medical, and behavioral information.
16. To ensure compliance with the First Amendment rights of recipients.
17. To cooperate with the State's mortality reviews process.
18. To provide open access to staff, representatives, or contractors of the State (including the Division of Mental Retardation Services) for the purpose of determining compliance with court ordered activities for any member of the Class created by the Settlement Agreement for *People First vs. Clover Bottom*, et. al., or certified in *United States vs. State of Tennessee*, et. al. (Arlington Developmental Center).
19. To provide open access to the Quality Review Panel created by the Settlement Agreement for *People First vs. Clover Bottom*, et. al., or the Court Monitor created by *United States vs. State of Tennessee*, et. al. (Arlington Developmental Center) and the parties in those lawsuits.

20. To comply with relevant terms of the Settlement Agreement for *People First vs. Clover Bottom*, et. al., or *United States vs. State of Tennessee*, et. al., (Arlington Developmental Center) in the provision of services to any member of the Class created or certified by such, including compliance with Community Plans, policies, and procedures developed as a result of the Settlement Agreement or Remedial Order, and with subsequent orders of the court affecting this Class.

B. Reimbursement:

1. To accept the amount of vendor payment from the Department and patient liability as payment in full for all covered services.
2. To make no charge for covered services provided to a recipient of Medicaid/TennCare which is in excess of charges made to other patients being provided the same type of services in the Facility.
3. To accept the reimbursable cost rate established by the Comptroller of the Treasury as the maximum rate to be allowed for the Facility's covered services. (The Comptroller of the Treasury will establish per diem reimbursement rates for the institutions or distinct parts thereof rendering intermediate care for the mentally retarded. The Comptroller of the Treasury will advise both the provider and the Department of any new rate or rate change).
4. To submit a cost report to the Comptroller of the Treasury on forms designated by the Comptroller at the Facility's fiscal year end. The cost report shall be due three months from the end of the designated fiscal period. Such cost report must be completed in accordance with Medicare reimbursement principles unless otherwise specified by state rules and regulations. In the event that the Facility does not file the required information by the due date, unless an extension in writing has been granted, the Facility shall be subject to a penalty of ten dollars (\$ 10.00) per day in accordance with state law.
5. To allow the Department, the Comptroller of the Treasury or their agents to audit the cost report and records of a Facility in order to verify the cost data or other information submitted by the provider and to investigate possible infractions of State and Federal regulations, and to maintain such records in accordance with any regulations promulgated by the Comptroller of the Treasury.
6. To have on file and make available to the Department's authorized personnel and to the Comptroller of the Treasury or its agent, all contracts for covered services provided by a provider other than the Facility itself.
7. To not charge the recipient for items included in the determination of reimbursable per-diem cost, or for health services available under the Medicare or other Medicaid/TennCare Programs.

8. To provide a written financial contract with each recipient or with his or her representative upon admission of the recipient. The contract shall set out the rate of regular patient charge, if less than the reimbursable cost and shall designate the patient's financial resources which will be forthcoming from all sources and applied toward meeting the cost of care. One copy of the financial contract will be maintained in the Facility's files.

C. TERM

1. This Contract shall be effective for a period of twelve (12) months, commencing on _____ and ending on _____. The State shall have no obligation for services rendered by the Facility which are not performed within the specified period.

D. Disclosure Of Ownership And Related Information :

1. To keep any records necessary to disclose the extent of services the provider furnishes to recipients.
2. To furnish upon request to the Bureau of TennCare, the State's Medicaid/TennCare fraud control unit, and the Secretary of the United States Department of Health and Human Services (hereinafter referred to as the "Secretary") any information contained in the records, including information regarding payments claimed by the provider for furnishing services to recipients.
3. To disclose to the Department the identity of any person who has ownership or control interest in the Facility or is an agent or managing employee of the Facility.
4. To disclose to the Department the name and address of each person with an ownership or control interest in the disclosing entity or in a subcontractor in which the disclosing entity has a direct or indirect ownership interest of five (5) percent or more.
5. To inform the Department if any person(s) named, in compliance with I. D. 4. above of this agreement, is related to another as a spouse, parent, child or sibling.
6. To name any other disclosing entity in which a person(s) with an ownership or control interest in the disclosing entity also has an ownership or control interest. This applies to the extent that the disclosing entity can obtain this information by requesting it in writing from the person.
7. To keep copies of all requests and the responses to them in accordance with I. D. 6. above and to make them available to the Secretary or the Bureau of TennCare upon request and advise the Bureau of TennCare when there is no response to a request.

8. To submit within thirty-five (35) days of the date of request by the Secretary or the Bureau of TennCare full and complete information about:
 - (1) The ownership of any subcontractor with whom the provider has had business transactions totaling more than \$25,000.00 during the 12-month period ending on the date of the request.
 - (2) Any significant business transactions between the provider and any wholly owned supplier, or between the Facility and any subcontractor, during the 5-year period ending on the date of the request.
9. To furnish updated information to the Secretary, the State survey agency, or Bureau of TennCare at intervals between recertification or contract renewals within thirty-five (35) days of a written request.
10. To disclose to the Department the identity of any person in accordance with I. D. 3. above that has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid/TennCare or the Title XX services Program since the inception of those programs.

II The Department Agrees :

- A. To furnish the Facility with the proper billing forms for claiming reimbursement for services.
- B. To reimburse the Facility on a timely basis in the amount of vendor payment not to exceed the maximum Reimbursable Per Diem Rate established by the Comptroller of the Treasury.
- C. To provide the Facility with such expertise and assistance as may be required regarding state and federal regulations for Intermediate Care Facilities for the Mentally Retarded.

III The Department and Facility Mutually Agree :

- A. That the term "Administrator" appearing in the signature portion of the contract is interpreted to mean the present Administrator or his successor.
- B. That, in the event the U. S. Department of Finance and Administration terminates the Facility from the program, the Department will not be liable for the payments suspended by such action.
- C. This agreement will automatically cancel no later than the 60th day following the end of the time period specified for the correction of non-waived deficiencies cited during the federal certification process, if such deficiencies have not been corrected, or substantial progress made in correcting these deficiencies. This process is subject to applicable State and Federal Regulations pertaining to appeals.

- D. That the Department may cancel this agreement in accordance with State and Federal regulations when in its judgment the Facility has failed to abide by the terms and conditions of said agreement. The Department may also immediately suspend payments for any future services under this agreement. Within 30 days of such suspension, the Facility will have the right to request a fair hearing so that it may show cause why such payments should be reinstated.
- E. That as the Federal standards for participation are amended, modified, or changed, the Department shall immediately furnish the Facility a copy of any such changes, and that the Facility shall accept such amendment, modification, or change by acknowledging such change within 30 days from receipt thereof; such signed acknowledgement by the Facility shall become a part of this agreement, the same as if written into the Agreement, and the failure of the Facility to execute the acknowledgement and return it to the Department shall constitute an automatic revocation of this Agreement.
- F. That the effective date for vendor payments shall be the date that the Facility attains participating status as determined by the Department under Federal standards for participation and that such determination shall be made a part of this agreement.
- G. That should the Office of the Comptroller, through audit of the Facility, discover that amounts have been overcharged and collected from the individual recipients, the Facility will place the overcharged amounts in escrow accounts, approved by the Department, for the recipients, should the Facility choose to contest these findings. Otherwise, the Facility will promptly reimburse the recipients.
- H. That should the Office of the Comptroller, through audit of the Facility, discover irregularities which in its opinion constitute overpayments to the Facility by the Department, the Department may withhold the amount of such overpayments from future payments to the Facility until an amount equal to that overpaid by the Department has been collected from payments otherwise due the Facility. The reimbursement of these overpayments, upon request by the Facility, may be made on an installment payment plan.
- I. The Facility, or the State, may cancel this agreement by providing the other party with thirty (30) days written notice of such intent.

Confidentiality of Records.

Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. The Contractor's

obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit the Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

HIPAA Compliance.

Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.

TBI MFCU Access to Contractor and Provider Records Program Integrity Access to Contractor, Provider, and Enrollee Records.

Pursuant to Executive Order 47 and 42 C.F.R. § 1007, the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) is the state agency responsible for the investigation of provider fraud, abuse, and neglect in the State Medicaid program (TennCare).

Program Integrity assists TBI MFCU with provider cases and has the primary responsibility to investigate TennCare enrollee fraud and abuse.

The Contractor shall immediately report to the TBI MFCU any known or suspected fraud, abuse, waste and/or neglect, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return monies allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action without informing the TBI MFCU, and must cooperate fully in any investigation by the TBI MFCU or subsequent legal action that may result from such an investigation.

The Contractor and all its health care providers, whether participating or non-participating providers, shall, upon request, make available to the TBI MFCU any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. In addition, the TBI MFCU must be allowed access to the place of business and to all TennCare records of any Contractor

or health care provider, whether participating or non-participating, during normal business hours, except under special circumstances when after hour admission shall be allowed. The TBI MFCU shall determine any and all special circumstances.

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, TBI MFCU is a health oversight agency. See 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. In its capacity as a health oversight agency, TBI MFCU does not need authorization in order to obtain enrollee protected health information (PHI). PHI is defined at 45 C.F.R. § 164.501. Because MFCU will request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to those disclosures to TBI MFCU that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d) and 65 F.R. §§ 82462 and 82673.

The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.

The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to Program Integrity. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. The Contractor and its health care providers, whether participating or non-participating providers, shall, upon request, make available any and all supporting documentation/records relating to delivery of items or services for which TennCare monies are expended. Shall the need arise, Program Integrity must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

Debarment and Suspension.

To the best of its knowledge and belief, the Contractor certifies by its signature to this Contract that the Contractor and its principals:

- A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State department or Contractor;
- B. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, State, or Local) transaction or grant under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- C. are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- D. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, State, or Local) terminated for cause or default.

Contract Beginning Date : _____

Contract Ending Date: _____

Automatic Cancellation Clause Date:

Subject to Provision III – C (See Page 7) _____

Name of Intermediate Care/MR Facility : _____

Address : _____

Provider Number : _____

By : _____

Administrator

Date

Tennessee Department of Finance and Administration, Title XIX Agency

By : _____

Commissioner

Date